Decision **DRAFT DECISION OF ALJ O'DONNELL (Mailed 8/5/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Roseville Telephone Company (U 1015 C) to Review Its New Regulatory Framework.	Application 99-03-025 (Filed March 8, 1999)

DECISION DENYING PETITION TO MODIFY DECISION 01-06-077

I. Summary

On May 3, 2002, Roseville Telephone Company (Roseville) filed a petition to modify Decision (D.) 01-06-077. In D.01-06-077, we reviewed Roseville's new regulatory framework (NRF) structure, and addressed a variety of issues raised by an audit of Roseville's affiliate and non-regulated operations conducted by the Commission's Office of Ratepayer Advocates (ORA). In the petition, Roseville asks the Commission to eliminate the requirement to share 50% of its earnings between the benchmark rate of return and the ceiling rate of return. By this decision, we deny the petition because Roseville has provided nothing new that convinces us that change is needed at this time. In addition, we order Roseville to file for its next NRF review 90 days after a final decision in Rulemaking (R.) 01-09-001 and Investigation (I.) 01-09-002, the NRF review for Pacific Bell Telephone Company, now SBC California, and Verizon California Incorporated.

II. Roseville's Petition

Under Roseville's current NRF, there is no sharing below the benchmark rate of return (11.5%). There is 50% sharing between the benchmark rate of return and the ceiling rate of return (15%), and 100% sharing above the ceiling rate of return.[1] Under Roseville's proposal, there would be no sharing below the ceiling rate of return, and 100% sharing above it.

Roseville represents that, due to increased competition, it has lost over 13% of its business customers to competitors. It also says it has lost 11% of its residential customers to wireless competitors. As a result, Roseville says that it is essential that all telecommunications providers be subject to non-discriminatory and economically correct investment incentives. Roseville represents that sharing (i) dilutes incentives to invest in new infrastructure and technology, (ii) distorts pricing decisions for regulated services, (iii) does nothing to mitigate theoretical incentives to misallocate costs and subsidize competitive services, and (iv) continues to impose regulatory costs and inefficiencies. Roseville further contends that the current sharing mechanism will discourage investment in non-regulated plant that will provide new services to customers.

In support of its argument, Roseville says that its board of directors decided not to consider funding for projects involving non-regulated wireless and video services that would have utilized Roseville's network.[2] In addition, its board of directors reduced Roseville's 2002 capital budget by $10 million. However, Roseville maintains that it continues to make the investments necessary to maintain service to its customers.

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[1] The percent sharing refers to the amount of earnings returned to ratepayers. For example, 50% sharing means that 50% of the earnings are returned to ratepayers.

[2] Roseville is owned by SureWest Communications, a holding company.

III. Discussion

Roseville's request generally repeats arguments made in its original application. The only new information is that it believes competition has increased, and its board of directors has reduced its capital budget. We have actively encouraged competition, and NRF was designed with competition in mind. Therefore, we believe that the competition alleged by Roseville is desirable and not, in and of itself, justification for removing the 50% sharing requirement.

Roseville has not made a convincing argument that its reduced capital spending is directly attributable to sharing. Roseville cut its 2002 capital spending at a time when other telecommunications providers were reducing spending due to tight capital markets, and weakened economic conditions. In addition, the cutbacks related to wireless and video are for services that are not subject to sharing. Roseville has not explained how sharing creates a disincentive for investment in services whose profits are not subject to sharing. We also note that it has the potential to earn up to a 13.25% rate of return under the current sharing mechanism, which significantly exceeds the 10% market-based rate of return that has been established for Roseville. Therefore, Roseville has provided nothing new that convinces us to change our previous decision at this time.

Reinstatement of sharing is an issue before us in R.01-09-001 and I.01-09-002. Therefore, it makes sense to address Roseville's NRF, including its concerns regarding sharing, after those proceedings have been completed. As a result, we will direct Roseville to file for its next NRF review no later than 90 days after a final decision therein.

IV. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure.

V. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. The increased competition, alleged by Roseville, is desirable and not, in and of itself, justification for removing sharing.

2. Roseville has not made a convincing argument that its reduced capital spending is directly attributable to sharing.

3. Roseville cut its capital spending at a time when other telecommunications providers were reducing spending due to tight capital markets, and weakened economic conditions.

4. Roseville's cutbacks related to wireless and video are for services that are not subject to sharing.

5. Roseville has not explained how sharing creates a disincentive for investment in services whose profits are not subject to sharing.

6. Roseville has the potential to earn up to a 13.25% rate of return under the current sharing mechanism, which significantly exceeds the 10% market-based rate of return that has been established for Roseville.

7. It makes sense to address Roseville's NRF after R.01-09-001 and I.01-09-002 have been completed.

Conclusions of Law

1. Roseville has provided nothing new that convinces us to change our previous decision.

2. Roseville's petition to modify D.01-06-077 should be denied.

3. Roseville should be directed to file for its next NRF review no later than 90 days after a final decision in R.01-09-001 and I.01-09-002.

O R D E R

IT IS ORDERED that:

1. The petition of Roseville Telephone Company (Roseville) to modify Decision 01-06-077 is denied.

2. Roseville shall file its next review of its New Regulatory Framework no later than 90 days after a final decision in Rulemaking 01-09-001 and Investigation 01-09-002.

3. This proceeding is closed.

This order is effective today.

Dated_______________, at San Francisco, California.